

## ISSUES

The only issue presented on appeal was the liability of the Kansas Workers Compensation Fund, if any. Other findings by the Special Administrative Law Judge are hereby adopted by the Appeals Board.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Kansas Workers Compensation Fund becomes responsible for payment of all or a portion of an award when it is established that the employer employed or retained the employee with knowledge of a handicap and the accident at issue either: (a) would not have occurred but for the preexisting handicap; or (b) the preexisting handicap contributes to the disability. On appeal respondent contends that it retained claimant with knowledge of a handicap and the injury at issue in this claim would not have occurred but for that handicap. The Kansas Workers Compensation Fund, on the other hand, contends that the record shows only that respondent knew of prior medical treatment, not of a condition which qualifies as a handicap. In addition, the Kansas Workers Compensation Fund argues that claimant's current injuries would have occurred regardless of the prior handicap; that at most the prior condition contributed to the resulting disability.

After review of the record, the Appeals Board finds that respondent did retain claimant with knowledge of a handicap. The injury at issue in this claim is a bilateral carpal tunnel injury in 1991. The record reflects that, while in employ of respondent, claimant began experiencing left wrist pain and numbness in 1987. Respondent referred claimant to Dr. Robert L. Eyster, M.D. Dr. Eyster diagnosed carpal tunnel syndrome on the left wrist in May of 1987. He did not consider the condition serious enough at that point to require surgery but did indicate that surgery would be appropriate if the symptoms increased. Dr. Eyster released claimant to return to her regular duties at work in the bindery department of respondent's printing operation. He prescribed a splint but did not recommend restrictions. Claimant's symptoms did thereafter increase and she developed additional problems in her right wrist and in both shoulders.

In support of its argument that respondent did not have knowledge of a handicap, the Kansas Workers Compensation Fund emphasizes the fact that in 1987 Dr. Eyster released claimant without restrictions and she thereafter performed her regular duties. While these facts do give some support for the Kansas Workers Compensation Fund's argument, the Appeals Board, nevertheless believes, based upon the record as a whole, that respondent has established it had knowledge of a handicap. The authorized treating physician had diagnosed carpal tunnel syndrome and suggested that surgery might be necessary in the future. While the record does not specifically reflect that this diagnosis was related to respondent, it does appear that the doctor was the one to whom claimant had been referred by the respondent, and the bills for his examination and evaluation were paid for by the respondent. Also, claimant did wear a splint at work. Claimant testified that by 1988 her supervisors had become aware of the problems she was having with both arms. The release without restrictions in 1987 does not persuade the Appeals Board she was not handicapped. Even after bilateral carpal tunnel surgery in 1991, at which time her handicap was more clearly established, she was again released to her regular duties. On balance, the Appeals Board believes that the evidence does establish that respondent retained claimant as an employee with knowledge of her handicap.

It must, of course, also be shown that claimant's preexisting handicap contributed to her current disability. Two physicians testified on the subject. Dr. Schlachter testified that, in his opinion, the current disability would not have occurred but for the initial left hand symptoms in 1987. He also testified that, in his opinion, the current condition and surgery would not have occurred but for the initial problems with her left wrist and subsequent aggravation to her right wrist. He concluded that the problems in her right wrist resulted

from overuse of the right arm due to the problems with the left wrist. Dr. Lucas, the physician who performed the bilateral carpal tunnel release, testified that the worsening of her condition in 1991 related back to 1987. He testified that it would be fair to say that the 1991 treatment would not have occurred but for the onset of the condition in 1987. While the opinion of Dr. Lucas is not expressed in language which matches our statutory language, the Appeals Board, nevertheless, believes it is consistent with and supports the opinions given by Dr. Schlachter. The Appeals Board reads both together as indicating that the current symptoms and disability would not have occurred but for the preexisting handicap. On this basis, the Appeals Board finds that all of the compensation awarded should be paid by the Kansas Workers Compensation Fund.

### **AWARD**

**WHEREFORE**, an award of compensation is hereby made in accordance with the above findings against the Kansas Workers Compensation Fund for an accidental injury sustained from January 1991 through February 15, 1991, and based on an average weekly wage of \$434.00, for 51 weeks of temporary total disability compensation at the rate of \$278.00 per week in the sum of \$14,178.00 and 364 weeks of compensation at the rate of \$112.85 per week in the sum of \$41,077.40 for a thirty-nine percent (39%) permanent partial general body work disability making a total award of \$55,255.40.

As of February 11, 1994, there is due and owing claimant \$14,178.00 in temporary total compensation and 105.14 weeks of permanent partial compensation at the rate of \$112.85 per week in the sum of \$11,865.05 making a total due and owing of \$26,043.05.

The remaining 258.86 weeks are to be paid at the rate of \$112.85 per week until fully paid or further order of the Director.

Fees necessary to defray the expenses of administration of the Kansas Workers Compensation Act are hereby assessed against the Kansas Workers Compensation Fund to be paid direct as follows:

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| WILLIAM F. MORRISSEY<br>Special Administrative Law Judge      | \$ 150.00 |
| BARBER & ASSOCIATES<br>Transcript of Preliminary Hearing      | \$ 65.70  |
| Transcript of Regular Hearing                                 | Unknown   |
| Deposition of Tekla T. McFaul                                 | \$ 254.80 |
| DON K. SMITH & ASSOCIATES<br>Deposition of George Lucas, M.D. | \$ 203.50 |
| DEPOSITION SERVICES<br>Transcript of Preliminary Hearing      | \$ 70.20  |
| Deposition of Judy Rzeszotarski                               | \$ 162.36 |
| IRELAND COURT REPORTING<br>Deposition of Jerry D. Hardin      | \$ 300.25 |
| Deposition of Ernest R. Schlachter, M.D.                      | \$ 168.00 |

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 1994.

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BOARD MEMBER

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cc: Robert R. Lee, 1861 N Rock Road, Suite 320, Wichita, Kansas 67206  
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William F. Morrissey, Special Administrative Law Judge  
George Gomez, Director